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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,736	02/28/2002	Lin Yang	J6704(C)	8420
201	7590	12/04/2003	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			COLE, MONIQUE T	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/085,736	YANG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Monique T. Cole	1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/28/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:  
    1. ☐ Certified copies of the priority documents have been received.  
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2,3</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

1. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 depends from claim 8, wherein a recitation of surfactant systems is listed. However, claim 9 does not serve to further limit those surfactant systems previously listed. It appears as though it is Applicant intent to add the surfactants listed in claim 9 in addition to those recited in claim 8. If this is so, the claim should perhaps be drafted to specify "A composition according to claim 8, wherein said surfactant systems or surfactant system mixtures further include. . . ." Further clarification is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, this claim is rendered indefinite because it is unclear what Applicant contemplates when reciting ". . . maximum fragrance burst of one or more of the fragrance components of at least 20%. . ." By this phrase does Applicant intend that: 1) one of the

fragrance amounts totals 20% of the composition or 2) the fragrance, in totality, equals 20% of the composition. Further clarification is required.

Moreover, claim 1 is rendered because it is unclear what Applicant is referring to as the "undiluted product". What is this "undiluted product" and what are its components? Further clarification is required.

Claim 6 is rendered indefinite because the claim does not recite any components, and as such does not constitute a proper composition claim. Further clarification is required.

Claim 7 is rendered indefinite because it is not clear what Applicant contemplates by the phrase ".0001 wt. to wt." There is no comparative weight specified in the claim. Further clarification is required.

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-5, 8 & 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USP 6,194,375 to Ness et al. (herein referred to as "Ness").

Ness teaches compositions containing perfume wherein several perfumes of instant claims 3 & 5 are utilized. Namely, dodecanal, benzyl salicylate, carvone laero, citronellol, coumarin, dihydronyrceol, tonalid, hexyl cinnamic aldehyde, lilial, linolol & gamma-undecalactone (col. 27, lines 20-42). These perfume components may be used in conjunction with sodium lauryl ether sulfate and polyvinyl alcohol, both surfactants recited in the instant claims. See Example 8 & Example 11.

While the Ness reference does not explicitly refer to the disclosed composition in terms of a maximum fragrance burst, it is the Examiner's position that the disclosed composition nonetheless meets the limitations of the instant claims. When the reference discloses all the

limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possess properties which anticipate or render obvious the claimed invention, there is basis for shifting the burden of proof to Applicant. See *In re Fitzgerald*, 619 F.2d 67, MPEP §2112. In the instant case, the perfume and surfactant components of the dependent claims should necessarily be within the scope of independent claim 1. Thus, by comprising a composition that contains both a claimed perfume and claimed surfactant, it should follow that Ness should be within the scope of claim 1, absent any evidence to the contrary.

#### *Double Patenting*

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-6 & 9-11 of copending Application No. 10/084,907. Although the conflicting claims are not identical, they are not patentably distinct from each other because if an application claims are broader or more generic than the copending application's claims, then the instant application's claims are anticipated by the copending

application's claims. See *in re Goodman*. In the instant case, the claimed composition is disclosed in its entirety in the claims of copending application 10/084,907.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-6 & 9-11 of copending Application No. 10/085,721. Although the conflicting claims are not identical, they are not patentably distinct from each other because if an application claim is broader or more generic than the co-pending application's claims, then the instant application's claims are anticipated by the copending application's claims. See *in re Goodman*. In the instant case, the claimed composition is disclosed in its entirety in the claims of copending application 10/085,721.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 703-305-0447. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0661.

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*Monique T. Cole*  
Monique T. Cole  
Examiner  
Art Unit 1743

MC